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Review of implementation of the United Nations Convention against Corruption

Executive summary

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II. Executive summary

Sri Lanka

1. Introduction: Overview of the legal and institutional framework of Sri Lanka in the context of implementation of the United Nations Convention against Corruption

Sri Lanka signed the Convention on 15 March 2004 and ratified it on 31 March 2004. It entered into force for Sri Lanka on 14 December 2005.

The Roman Dutch Law remains the common law of the country, while the impact on the common law system derived from the English law has had a much greater influence on the laws of Sri Lanka than the Roman tradition. The common law has been modified, both expressly and by implication by statutory law and judicial decisions. The penal provisions are set out in the Penal Code and the law relating to criminal procedure in Sri Lanka is governed by the Criminal Procedure Code; civil procedure is set out in the Civil Procedure Code.

The most important legislation with regard to the implementation of the Convention includes the Bribery Act [Cap. 26], Commission to Investigate Allegations of Bribery or Corruption (CIABOC) Act No. 19 of 1994, Prevention of Money Laundering Act No. 5 of 2006, as amended by Act No. 40 of 2011, Penal Code [Cap. 25], Code of Criminal Procedure Act No. 15 of 1979 [Cap. 26], Judicature Act No. 2 of 1978, Declaration of Assets and Liabilities Law No. 1 of 1975, Financial Transactions Reporting Act No. 6 of 2006, Establishments, Code, Bail Act No. 30 of 1997, Extradition Law No. 8 of 1977, as amended by Act 48 of 1999, and Mutual Assistance in Criminal Matters Act No. 25 of 2005.

The hierarchy of Courts of first instance is set out in Section 2 of the Judicature Act. Primary Courts, Magistrate's Courts, District Courts and High Courts are Courts of first instance. High Courts exercise appellate and review jurisdiction in some matters. The Court of Appeal and the Supreme Court are the Appellate Courts.

The institutional network of agencies involved in the fight against corruption include the CIABOC, the police, the Attorney General's Office, Financial Intelligence Unit, Inland Revenue, Committee on Public Enterprises, Judicial Service Commission and the Public Service Commission.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Sections 14(a), 16(a), 17(a), 19(a), 20(a), (b), 21(a), (b), 22(a), (b), 88, 89 and 90 of the Bribery Act criminalize active bribery.

Passive bribery is covered by sections 14(b), 15, 16(b), 17(b), 19(b), 20(b), 21(c), 22(c), 22(d), 24, 89 and 89A of the Bribery Act.

The broad definition of "gratification" in section 90 of the Bribery Act covers various forms of undue advantage. Item (e) of the section additionally clarifies that gratification includes "offer, undertaking and promise", thus covering the elements

of promising and offering as required by article 15 of United Nations Convention against Corruption. That conclusion is also supported by relevant case law examples.

The Bribery Act covers different categories of public officials including judicial officers and parliamentarians (section 14), and different types of public servants (section 16, section 19).

Sri Lanka has not criminalized the bribery of foreign public officials and officials of public international organizations; however, the possibility of the adoption of relevant measures is currently being discussed.

Sri Lankan legislation does not expressly criminalize trading of influence, although some sections of the Bribery Act (sections 17 and 19) may be regarded as covering certain elements of that offence.

Sri Lanka did not criminalize bribery in the private sector, although some provisions of the Bribery Act (section 18 on bribery among bidders for government tenders) touch upon certain aspects of bribery in the private sector. To address the issue three committees were established at the level of CIABOC to consider possible legislative amendments.

Money-laundering, concealment (arts. 23 and 24)

The main elements of the offence of money-laundering are covered in the Prevention of Money Laundering Act (e.g., section 3), although no practical examples of implementation were provided.

Predicate offences include, inter alia, the offences prescribed in the Bribery Act (section 35(c) of the Prevention of Money Laundering Act) and offences subject to the death penalty or imprisonment of 5 years or more, and some offences listed in certain sections of the Penal Code, which appear to cover offences established in accordance with the Convention. Dual criminality is not required for offences committed outside Sri Lanka to be deemed predicate offences.

Sri Lankan law does not preclude a person from being charged with both money-laundering and the predicate offence.

Concealment is covered by section 3(1)(b) of the Prevention of Money Laundering Act.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Sections 386 (Dishonest misappropriation of property), 388 and 389 of the Penal Code (both on criminal breach of trust) criminalize the diversion of property by any person, including public officials. Section 392 (Criminal breach of trust by public servant or by banker, merchant or agent) and section 5(1) of the Offences against Public Property Act No. 12 of 1982 provide for the aggravated punishment of embezzlement by public officials or against public property. Case law applies similar principles to the prosecution of embezzlement in the public and the private sectors.

Abuse of functions is addressed in section 70 of the Bribery Act (Corruption), which provides a relatively comprehensive coverage of all elements of the offence stipulated in article 17 of the Convention.

Section 23A of the Bribery Act contains detailed provisions on illicit enrichment covering public officials and their family members. Sri Lankan courts would presume that any illicit enrichment is a product of bribery even though it may be a product of another corruption offence, including embezzlement or abuse of functions. Sri Lanka has also established a functional system of asset declarations for public officials which is conducive to the effective implementation of Section 23A.

Obstruction of justice (art. 25)

Section 73 of the Bribery Act (Interference with witnesses) criminalizes interfering with a witness or impeding witnesses in bribery cases.

The use of physical force, threats or intimidation to interfere with the exercise of official duties by justice or law enforcement officials is criminalized in section 23 of the CIABOC Act, section 74(1), (2), (3) and section 75(1) of the Bribery Act, and sections 183-187 of the Penal Code.

Liability of legal persons (art. 26)

The definition of "person" in section 8 of the Penal Code includes both legal and natural persons. However, there is no clarity whether the same concept applies to the "persons" referred to in the Bribery Act. Legal persons can be civilly and administratively liable based on applicable common law principles in which regard some court practice also exists. However, no examples of case law where legal persons were prosecuted for corruption-related offences exist.

Participation and attempt (art. 27)

Attempt and participation (in the form of abetment and conspiracy) are criminalized in section 25 of the Bribery Act. Additionally, relevant provisions are contained in the Penal Code (section 100 (abetment) and section 113A(1) (conspiracy)).

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The Bribery Act provides that relevant offences may be subject to imprisonment for up to seven years and up to ten years for corruption (section 70). Some offences are punishable with minimum mandatory sentences (e.g., section 3 of the Prevention of Money Laundering Act). Judges consider the gravity of offences when imposing penalties.

Only the President of Sri Lanka is granted immunity from criminal prosecutions. No other public officials enjoy criminal immunities.

According to sections 30A(2), (4) and 73(2) of the Bribery Act, persons suspected of accepting bribes and impeding witnesses from giving evidence may be released on bail in exceptional circumstances only.

Section 58 of the Prisons Ordinance allows for remissions of sentences and rewards for good conduct. There are no measures on early release or parole based on the gravity of the offences concerned.

The Establishments Code (section 31:1:3 and 4) provides that public officers who have been prosecuted on bribery or corruption charges may be suspended. Preliminary investigations prior to prosecution are addressed in subsection 13 of the Establishments Code. Chapter V of Regulation 40 and section 29 of the Bribery Act disqualify persons convicted by a court of a criminal offence against the State and specifically of bribery (section 29) from appointment to the public service.

The Public Service Commission of Sri Lanka can take disciplinary measures against public officials in parallel with criminal proceedings, according to sections 27 and 28 of the Establishments Code.

Sri Lanka does not have measures in the current legislation providing for the reintegration into society of persons convicted of corruption offences, although a general rehabilitation programme not specific to corruption is in place that covers all offenders.

Section 81(1) of the Bribery Act provides for a possibility of granting pardon to a participating offender who provided relevant information to facilitate a prosecution. However, the measure is limited to offences stipulated in the Bribery Act. The possibility of mitigating punishment of cooperating offenders is not provided.

Protection of witnesses and reporting persons (arts. 32 and 33)

Section 23 of the CIABOC Act provides for passive protection of witnesses against retaliation and intimidation. A bill on Witness Protection was being drafted at the time of the country visit and included comprehensive protections, including active protection measures. The bill came into operation following the country visit as the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015. Some victim protection measures are envisaged in the Code of Criminal Procedure Act and section 187 of the Penal Code.

Section 9 of the CIABOC Act provides immunity from civil and criminal liability to any person who provides information to the Commission. A partial protection of reporting persons is also possible based on the Human Rights Commission Act No. 21 of 1996 and by the Labour Tribunal based on the Industrial Dispute Act No. 27 of 1996.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

The confiscation of corruption proceeds is limited to the proceeds of crimes derived from money-laundering and bribery (sections 26A, 28A(1), 39 of the Bribery Act, sections 3, 13 of the Prevention of Money Laundering Act). To that limited extent, the confiscation of instrumentalities of those two offences is provided for. Section 12 of the Prevention of Money Laundering Act provides for value-based confiscation of the proceeds of money-laundering. Based on section 13(4) of the Act, extended confiscation is also possible. Section 39 of the Bribery Act provides for the recovery of bribes from the offender to the State.

The Prevention of Money Laundering Act contains provisions on the freezing and seizure of proceeds of money-laundering (sections 7, 12). Certain general provisions relating to the identification and seizure of assets are contained in Chapter VI of the Code of Criminal Procedure and the CIABOC Act. Additionally, the identification

and tracing of corruption proceeds can be conducted based on the Financial Transaction Reporting Act.

Sections 11 and 15 of the Prevention of Money Laundering Act address the appointment of a receiver to administer frozen or confiscated property by the Court.

Section 4 of the Prevention of Money Laundering Act contains the presumption of unlawful origin of assets in money-laundering cases. A similar presumption of the unlawful origin of assets in illicit enrichment cases is contained in section 23A(1) of the Bribery Act.

Section 13(2) of the Prevention of Money Laundering Act and section 28A(1) of the Bribery Act provide for protection of the rights of bona fide third parties in confiscation proceedings.

Bank secrecy is not an obstacle to domestic criminal investigations and particularly the investigation and seizure of bank, financial or commercial records, as follows from section 5(1)(d) of the CIABOC Act, section 16 and 27 of the Prevention of Money Laundering Act and section 18 and 31 of the Financial Transactions Reporting Act.

Statute of limitations; criminal record (arts. 29 and 41)

Based on section 456 of the Criminal Procedure Code, the statute of limitations applicable to general offences (including corruption offences) is 20 years.

Previous convictions in other States are not admissible in Sri Lanka.

Jurisdiction (art. 42)

Jurisdiction is based on the Judicature Act, read with section 11 of the Code of Criminal Procedure Act. Section 9(f) of the Judicature Act establishes jurisdiction over offences committed by Sri Lankan citizens outside the country. The current legislation does not cover foreign participatory acts to money-laundering. Sri Lanka is specifically considering the possibility of establishing its jurisdiction over corruption offences when the alleged offender is present in its territory and it does not extradite him.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Although there is no specific statutory provision to that effect, Sri Lankan court can consider corruption as a relevant factor to annul or rescind a contract or withdraw a concession or similar instrument or take any other remedial action based on common law principles.

Parties who have suffered damage may seek remedies based on the Civil Procedure Code against others' unjust enrichment.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

CIABOC is a specialized agency tasked with the investigation and prosecution of corruption offences (bribery, illicit enrichment, and offences under the Declaration of Assets and Liabilities Law). Three members of the Commission are appointed by the President and submit regular annual reports directly to him and thereafter to the Parliament. Members and officers of the Commission receive regular training.

Money-laundering, embezzlement and other Penal Code offences are investigated by the police, who have a special unit focusing on corruption offences, and prosecuted by the Attorney General's Office. Other relevant agencies include the Financial Intelligence Unit and the Public Service Commission.

Sri Lankan authorities would cooperate with and provide necessary information to the CIABOC. Public officials have a duty to report corruption offences to the Commission under the Establishments Code.

Entities in the private sector may report corruption to the Commission based on section 4 of the CIABOC Act. Financial institutions and other entities are required to report suspicious transactions in relation to financial activities pursuant to the Prevention of Money Laundering Act.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter III of the Convention are highlighted:

- Comprehensive coverage of subjects, elements and penalties for bribery offences in the Bribery Act.
- Section 21 of the Bribery Act criminalizing offering of any gratification to any public servant within one year before or after any dealings with that public servant's department, as a measure facilitating the prosecution of corruption offences.
- Section 24 of the Bribery Act providing for the punishment of a public servant who accepted any gratification offered in consideration of his doing or forbearing from any act, regardless of him not actually having the power, right or opportunity therefor, the lack of his intention, or that he did not in fact so act or forbear.
- Comprehensive illicit enrichment provisions set up in section 23A of the Bribery Act, also covering family members of implicated public officials in combination with a system of asset declarations of public officials.

2.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- Take necessary legislative measures to implement article 16 of the Convention against Corruption.
- Consider criminalizing trading of influence.
- Consider adopting specific legislation in accordance with article 21 of the Convention in order to criminalize bribery in the private sector.
- Furnish copies of the laws that give effect to article 23 of the Convention to the Secretary-General of the United Nations.
- Criminalize interfering with a witness or impeding a witness in all kinds of cases involving corruption offences.
- Consider directly stipulating in the Bribery Act that the definition of "person" covers both natural and legal persons.

- More clearly stipulate procedures applied with regard to release on bail.
- Consider promoting the reintegration into society of persons convicted of offences established in accordance with the Convention.
- Consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of corruption offences.
- Adopt measures to encourage persons who participate or have participated in the commission of corruption offences, other than those stipulated in the Bribery Act, to supply information to competent authorities for investigative and evidentiary purposes.
- Consider adopting additional measures in the domestic legal system to ensure that persons reporting facts concerning corruption offences are protected against any unjustified treatment.
- Adopt such measures as may be necessary to enable freezing, seizure and confiscation of proceeds derived from all offences established in accordance with the Convention.
- Introduce a provision in the relevant legislation providing for the administration by the competent authorities of frozen, seized or confiscated property representing proceeds of all offences under the Convention.
- Consider adopting legislative or other measures that would enable the consideration of previous convictions of an alleged offender, particularly during trial and sentencing.
- Consider adopting additional measures in the domestic legal system to ensure that entities or persons who suffered damage as a result of acts of corruption have the right to initiate legal proceedings against those responsible for the damage in order to obtain compensation.

2.4. Technical assistance needs identified to improve implementation of the Convention

The following forms of technical assistance could assist Sri Lanka in more fully implementing the Convention:

- Assistance in conducting an assessment of the effectiveness of measures adopted to criminalize active and passive bribery of national public officials.
- Summary of good practices, lessons learned, model legislation legislative drafting, legal advice and on-site assistance by an anti-corruption expert and development of an action plan for implementation with regard to the criminalization of bribery of foreign public officials and officials of public international organizations.
- Summary of good practices, lessons learned, model legislation legislative drafting, legal advice and on-site assistance by an anti-corruption expert and development of an action plan for implementation with regard to the criminalization of bribery in the private sector.

- Summary of good practices, lessons learned, model legislation legislative drafting, legal advice and on-site assistance by an anti-corruption expert and development of an action plan for implementation with regard to the liability of legal persons.
- Legal advice, on-site assistance by an anti-corruption expert and development of an action plan for implementation with regard to the reintegration into society of persons convicted of corruption offences.
- Model legislation, legal advice and on-site assistance by an anti-corruption expert with regard to the protection of witnesses, experts and victims.
- Model legislation, legal advice and on-site assistance by an anti-corruption expert with regard to the protection of reporting persons.
- Summary of good practices, lessons learned, legislative drafting and legal advice with regard to cooperation with law enforcement authorities.
- Summary of good practices, lessons learned, model legislation, legislative drafting and legal advice with regard to taking into account criminal records from other States in domestic criminal proceedings.
- Summary of good practices, legal advice, on-site assistance by an anti-corruption expert and legislative drafting with regard to the implementation of article 42 of the Convention on jurisdiction.
- Assistance in conducting an assessment of the effectiveness of measures adopted to implement article 34 of the Convention on the consequences of acts of corruption.
- Summary of good practices, legal advice, on-site assistance by an anti-corruption expert, legislative drafting and development of an action plan for implementation with regard to compensation for damage resulting from acts of corruption.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition (art. 44)

Extradition is governed by the Extradition Law and the responsible authority for extradition is the Minister of Defence. Extradition may be provided without a treaty to Commonwealth countries that have been designated by order in the Gazette. A treaty is otherwise required for all other countries. For requests from both Commonwealth and treaty partners, the execution of the request is subject to the domestic laws of Sri Lanka. As a dualist country, international treaties require enabling domestic legislation to be implemented in Sri Lanka.

Extradition is subject to dual criminality and is limited to the extent that not all offences established under the Convention have been criminalized. However, the broad provision in the Extradition Act referring to offences under international crime control conventions would seem to cover all Convention against Corruption offences (see the Extradition (Amendment) Act No. 48 of 1999, Section 5).

Sri Lanka does not consider the Convention as the legal basis for extradition in respect to any corruption offences and has not made the requisite notification to the United Nations.

Sri Lanka is party to four bilateral extradition treaties, with Hong Kong (China), India, Italy and the United States of America. Simplified extradition arrangements are available under the Commonwealth Scheme on Extradition (London Scheme). Requests for extradition must be sent through diplomatic channels to the responsible authority for extradition, the Minister of Defence.

Under Sri Lanka's treaties, extraditable offences are those punishable according to the laws of both States by imprisonment for more than one year or a more severe penalty (extradition treaty with the United States (article 2(1)) and, additionally in the case of Hong Kong, China, those listed in a schedule in the treaty (Hong Kong, China, treaty, article 2(1)). This would include all Convention against Corruption offences. For extradition to Commonwealth countries with which no treaty is in place, the offence must also be described in a list in the Extradition Law and be punishable by at least one year.

Nationality is not a ground for refusing extradition under the Extradition Law; however, under Sri Lanka's bilateral treaty with Hong Kong, China, nationality is a discretionary ground for refusing extradition, and the obligation to promptly submit the case for prosecution where extradition of a national is refused is not addressed. The Judicature Act, which establishes the jurisdiction of the court, does not provide for an obligation to submit the case for prosecution if extradition has been refused. No requests for extradition of nationals have been received. No information was available from Sri Lankan authorities before or during the country visit as to whether fiscal offences satisfy the one-year imprisonment term to be extraditable under Sri Lanka's law and treaties.

The reviewing States noted that it was difficult to assess in detail Sri Lanka's practice of granting extradition in corruption cases due to the limited availability of information, the absence of data on requests made to Sri Lanka and any requests that Sri Lanka has refused, and, more generally, the absence of a specific system for collecting data. The obligation to consult with a requesting State before refusing extradition is not addressed in the Extradition Law and all bilateral treaties.

The issues of fair treatment, non-discrimination and the political offence exception have not been invoked to date.

Transfer of sentenced persons; transfer of criminal proceedings (arts. 45 and 47)

Sri Lanka has enacted the Transfer of Offenders Act, No. 5 of 1995[1] and bilateral agreements on the transfer of sentenced persons with Hong Kong (China), India, Kuwait, Maldives, Pakistan and the United Kingdom of Great Britain and Northern Ireland. To date, no case examples of transfer of persons sentenced for corruption offences were reported.

There is no law or practice on the transfer of criminal proceedings.

[1] Available at www.lawnet.lk/process.php?st=1995Y0V0C5A&hword=%27%27&path=5.

Mutual legal assistance (art. 46)

Sri Lanka's Mutual Assistance in Criminal Matters Act (MACMA) provides the legal basis for mutual legal assistance (MLA). MLA is subject to dual criminality and, except for Commonwealth countries designated by order in the Gazette, the existence of a treaty. Such treaties are in force with Hong Kong (China), Pakistan, Thailand and India. For requests from both Commonwealth and treaty partners, the execution of the request is subject to the domestic laws of Sri Lanka. Sri Lanka also subscribes to the Commonwealth (Harare) Scheme on MLA and assistance can be provided in the absence of a treaty on a case-by-case basis on the grounds of reciprocity.

The central authority for MLA is the Secretary to the Minister of Justice. Through INTERPOL, the Financial Intelligence Unit of Sri Lanka and other investigative agencies have, on the basis of reciprocity, provided informal mutual legal assistance on numerous occasions outside the statutory provisions.

MLA is limited to the extent that not all offences established under the Convention have been criminalized. However, the dual criminality requirement may be waived for MLA for a serious offence recognized under the law of Sri Lanka or of a specified country, which would not encompass Convention against Corruption offences not recognized in either Sri Lanka or the requesting country. There have been no cases where Sri Lanka provided assistance in the absence of dual criminality. No information was available as to whether Sri Lanka would render non-coercive assistance if the offence was not of a serious nature.

There have been no corruption-related requests and no requests for MLA have been refused by Sri Lanka to date. As a matter of practice, Sri Lanka appears to consult with requesting countries before refusing or postponing MLA. There have been no cases where assistance was postponed on the grounds of an ongoing criminal matter.

Representatives from the Attorney General's Office explained that evidence that is exculpatory to an accused would not have to be disclosed, although there have been no such cases to date.

Furthermore, it was explained that Sri Lanka provides grounds for refusal as a matter of practice, although there is no provision to this effect in the MACMA, and an example was provided.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Sri Lanka is a member of the Egmont Group of Financial Intelligence Units and its law enforcement agencies also cooperate through INTERPOL. Sri Lanka's Financial Intelligence Unit has entered into agreements on mutual legal assistance that provide for the exchange of information and enhance cooperation between law enforcement agencies. Sri Lanka could use the Convention against Corruption as a basis for direct law enforcement cooperation.

Joint investigations are provided for in agreements entered into with other States and could be undertaken on a case-by-case basis through the establishment of memorandums of understanding or other agreements or arrangements. Examples of non-corruption-related joint investigations were provided.

Although there are no specific legal provisions to allow for special investigative techniques, there is no prohibition to permit the use of such techniques as long as the evidence collated is in an admissible form.

3.2. Successes and good practices

- Sri Lanka may provide assistance in the absence of dual criminality for requests involving serious offences, and it was explained that these would include Convention against Corruption offences.
- The forms for MLA requests included in the schedule to the MACMA provide certainty to requesting countries as to the required content for MLA requests.

3.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- Adapt information systems to allow Sri Lanka to collect data on the origin of international cooperation requests, the time frame for their execution, and the response provided, including the offences involved and any grounds for refusal.
- Review the list of gazetted Commonwealth countries to ensure that all Commonwealth countries are covered (for both extradition and MLA).
- With respect to extradition, enhance knowledge of the extradition procedure and the role of the responsible authority for determining extradition requests among relevant authorities.
- Concerning extradition to Commonwealth countries with which no treaty is in place, consider whether the list-based approach to extradition affords sufficient flexibility to grant extradition to these countries for specific acts of corruption and to amend the list as needed to respond to corruption-related requests, including in future cases.
- Consider reviewing domestic requirements regarding the application of multilateral treaties such as the Convention as a legal basis for extradition.
- Provide the notifications under paragraph 6 of article 44 and paragraphs 13 and 14 of article 46.
- Amend relevant bilateral treaties to ensure that nationality is not a ground for refusing extradition and to include the obligation to promptly submit a case for prosecution where extradition of a national is refused.
- Include the *aut dedere aut judicare* obligation in its future extradition treaties.
- Consider adopting measures establishing that Sri Lanka will consider enforcing the remainder of a foreign sentence where extradition of nationals is refused.
- Ensure that requests for extradition regarding fiscal offences would not be refused.
- Amend the Extradition Law and relevant bilateral treaties to include a provision on the obligation to consult with a requesting State before refusing extradition.

- With respect to MLA, include appropriate measures to facilitate the provision of non-coercive MLA when the offence is not of a serious nature in the MACMA and MLA treaties.
- Take appropriate measures to render non-coercive assistance (para. 9, art. 46).
- Consider comprehensively reviewing the forms for MLA requests against the measures set forth in paragraphs 15 and 16 of article 46 to ensure adequate guidance to requesting countries.
- Consider adopting a checklist for MLA to serve as an administrative tool for authorities handling MLA requests.
- Consider clarifying the manner in which MLA requests are executed, particularly in the case of non-treaty partners (art. 46, para. 17).
- Continue to consider adopting relevant measures to allow for evidence to be taken and hearings to be conducted in criminal cases by video, including through relevant amendments to the Evidence Ordinance.
- Review legislation and procedures with regard to the disclosure of evidence exculpatory to an accused.
- Amend the MLA law to add a limitation on use clause.
- Consider including a confidentiality provision in the MLA Act, in particular for non-treaty and non-Commonwealth countries
- Amend the MACMA to provide that grounds for refusal shall be communicated.
- Amend the MACMA to include a provision on the timely execution of MLA requests and the provision of information on the status of requests.
- Consider specifying legislation and future treaties to provide greater legal certainty with regards to postponing MLA on the grounds of ongoing criminal matters.
- Amend the MACMA and relevant treaties to include a duty to consult before refusing or postponing MLA.
- Strengthen measures and efforts in international law enforcement cooperation, in particular channels of communication and cooperation in the investigation of specific cases.

3.4. Technical assistance needs identified to improve implementation of the Convention

Sri Lanka indicated that it would require technical assistance, including legal advice and capacity-building, on extradition, MLA and the transfer of criminal proceedings. In addition, it would require legal and technical assistance to assess the effectiveness of its measures on the transfer of offenders and the use of special investigative techniques. Furthermore, Sri Lanka indicated that a summary of good practices/lessons learned and capacity-building programmes would assist in enhancing law enforcement cooperation.

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II. Executive summary

The former Yugoslav Republic of Macedonia

1. Introduction: Overview of the legal and institutional framework of the former Yugoslav Republic of Macedonia in the context of implementation of the United Nations Convention against Corruption

The former Yugoslav Republic of Macedonia signed the United Nations Convention against Corruption on 18 August 2005 and ratified it on 13 April 2007. The Convention entered into force domestically on 13 May 2007.

The former Yugoslav Republic of Macedonia is a unitary State with a parliamentary type of governance. According to article 1 of its Constitution, the former Yugoslav Republic of Macedonia is a sovereign, independent, democratic and social State with its sovereignty deriving from and belonging to its citizens. The constitutional organization of power is based on its division into legislative, executive and judicial.

The Assembly is a representative body of citizens in which the legislative power is vested. At present, it is composed of 123 representatives, directly elected for a term of four years. The mandate of a representative is terminated if he/she is sentenced for a criminal offence for which a sentence of at least five years is prescribed.

The President is elected directly for a term of five years, for a maximum of two terms. The Constitutional Court decides on the accountability of the President by a two-third majority. If acknowledged accountable, the term of the President can be terminated.

The executive power is vested in the Government. The Prime Minister and Ministers cannot be members of Parliament. The Prime Minister enjoys immunity and the Parliament decides on his/her immunity. The office of the Prime Minister and that of a Minister is incompatible with the performance of any other public office or profession.

The judicial power is exercised by autonomous and independent courts which rule on the basis of the Constitution, laws and international agreements ratified in accordance with the Constitution.

According to article 118 of the Constitution, "international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by the laws."

The laws most relevant to the fight against corruption are the Criminal Code (CC); the Law on Civil Servants; the Law on the Management of Confiscated Property, Proceeds and Objects Seized in Criminal and Misdemeanour Procedure; the Law on Criminal Proceedings (CP); the Law on the Prevention of Corruption; the Law on Witness Protection; the Law on Public Servants and the Law on International Cooperation in Criminal Matters.

The institutions most relevant to the fight against corruption are the State Commission for the Prevention of Corruption; the Public Prosecutor's Office for the Fight against Organized Crime and Corruption; the Specialized Department for Proceeding Cases of Organized Crime and Corruption of the First Instance Court

Skopje 1; the Anti-corruption Unit of the Ministry of Interior; the Financial Police Administration of the Ministry of Finance; the Anti-corruption Department of the Public Revenue Office; and the Integrity Department of the Customs Administration.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active and passive bribery of public officials is criminalized pursuant to articles 358 and 357 of the CC respectively. Both articles cover bribery of national public officials, foreign public officials as well as officials of a public international organization.

Active bribery in the private sector (art. 253-a) and the active trading in influence (art. 358-a) were introduced as new criminal acts through the amendments of the CC of 2011. Prior to these amendments, only passive bribery in the private sector (art. 253) and passive trading in influence (art. 359) had been criminalized. The reviewing experts found all aforementioned provisions to be in line with the Convention. However, they were not in a position to judge on the effective implementation of the provisions on the criminalization of bribery in the private sector due to lack of related cases.

Money-laundering, concealment (arts. 23 and 24)

Article 273 of the CC criminalizes money-laundering, including self-laundering, although few cases had been taken forward under this provision.

As for predicate offences to money-laundering, the former Yugoslav Republic of Macedonia has adopted an all-crime approach, covering any criminal act committed within the national territory or abroad. Ancillary offences to money-laundering, including attempt (art. 19), instigation (art. 12) and conspiracy (art. 393), are also covered pursuant to the general provisions of the CC.

The national authorities confirmed that it was sufficient to establish the criminal nature of the proceeds without the need to identify the predicate offence for a money-laundering conviction.

The former Yugoslav Republic of Macedonia promised to send copies of its laws in accordance with article 23, subparagraph 2(d), of the Convention.

The concealment or continued retention of criminal proceeds is criminalized as a separate offence pursuant to article 261 of the CC, which does not prescribe a term of retention of such proceeds as an element of the incrimination.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

The former Yugoslav Republic of Macedonia has criminalized embezzlement, misappropriation or other diversion of property by a public official and abuse of functions in line with articles 17 and 19 of the Convention pursuant to articles 353 to 356 of the CC.

Article 355 (fraud in the service) incriminates intentional acquiring of an unlawful property benefit of the official person for himself/herself or for another, by submitting false bills or by deceiving the authorized person in some other way to effect an unlawful payment. The type of property which may be diverted or the actual criminal act is not specified, and therefore all kinds of property and diversion are covered.

Article 354 (embezzlement in the service) and article 356 (use of resources for personal benefit while in service) are both related to the type of property which a person can be authorized to hold/use in service or while performing duties of service (and may be physically returned).

Article 353 criminalizes the "abuse of official position and authorization", which covers the diversion of any kind of entrusted property committed while the perpetrator uses his/her official position or authorization, by exceeding the limits of his official authorization, or by not performing his/her official duty.

Embezzlement in the private sector is addressed in articles 354 and 355 of the CC for acts committed by "a responsible person in a legal entity". For the implementation of article 22 of the Convention, article 239 of the CC on concealment is also relevant.

The former Yugoslav Republic of Macedonia has criminalized illicit enrichment pursuant to article 359-a, introduced in 2009 to the CC. No cases have been brought forward on the basis of that article.

Obstruction of justice (art. 25)

Article 368-a of the CC criminalizes the illegal influencing of witnesses and makes it a general crime punishable by imprisonment of one to three years. Although "intimidation" and "promising and giving of an undue advantage" are not specifically mentioned, those are covered by the term "or in any other manner influencing a person".

Article 368 of the CC criminalizes the act of preventing the collection of evidence. Although it does not reflect the wording of article 25, paragraph (a), of the Convention, the term "or makes useless" covers all kinds of interference in the production of evidence.

Article 144 of the CC on "threatening the safety" is broad enough to cover all cases of threat, including threats directed at law enforcement officials.

Article 375 of the CC criminalizes the use of physical force, threats or intimidation to interfere with the exercise of official duties by judiciary employees.

Article 382 and 383 of the CC criminalize the use of physical force or threats against official persons including law enforcement officials.

Liability of legal persons (art. 26)

The criminal liability of legal persons is established in article 28-a of the CC and emphasized by the legal provisions for the criminal act of "giving a bribe" (art. 358, para. 5) and "receiving a reward for unlawful influence" (art. 359, para. 6). Such liability does not preclude the criminal liability of the natural persons who committed the offences.

The liability of legal persons is also recognized in civil and administrative procedures pursuant to article 70 of the Law on civil procedure and article 47 of the Law on general administrative procedure.

Adequate criminal and non-criminal sanctions are provided for when the liability of a legal entity is recognized. Those sanctions include fines or other monetary penalties, and can include termination of status of the legal entity, prohibition on participating in public contracting or/and confiscation of property and property gain, and forfeiture of objects.

Participation and attempt (art. 27)

The CC contains general provisions criminalizing the participation in an offence, namely article 22 on "joint perpetration", article 23 on "instigation" and article 24 on "assistance".

According to article 19 of the CC, attempted crimes are criminalized when the crime is punishable by imprisonment of five years or more or when the law explicitly prescribes a sentence for an attempt of such crime.

Most corruption offences are punishable by imprisonment of less than five years, which leaves their attempt unpunished unless the law explicitly provides otherwise, like in article 382 of the CC on "preventing an official person from the performance of an official act", and article 375 on "coercion of a judiciary employee".

Preparation to commit a crime is not criminalized itself, except in relation to a few non-corruption-related offences.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The former Yugoslav Republic of Macedonia has adopted penalties for corruption offences that range from a fine up to ten years' imprisonment, taking into account the gravity of the offence.

Immunities do not seem to constitute an impediment to the effective prosecution of such offences.

Prosecution follows the principle of legality.

Regarding procedures relating to release pending trial or appeal, the measures described in Chapter XVI of the CP are applicable to corruption offences. These include the prohibition to leave the temporary or permanent place of residence, an obligation for the defendant to report occasionally to a certain official person, and the temporary confiscation of a passport.

Early release is possible after having served half of the term of imprisonment or having served one third of the term of imprisonment if special circumstances concerning the personality of the convicted evidently show that the aim of the sentence has been achieved.

A public servant may be suspended from an institution in the cases where a criminal procedure has been initiated against him/her. Furthermore, several legal provisions exist regarding the termination of employment of a convicted public official.

The liability for a criminal offence does not exclude the disciplinary liability of the civil servant, pursuant to the Law on Civil Servants.

The Law on Execution of Sanctions provides for a number of measures to promote the reintegration of convicted offenders into society including training, counselling and employment assistance.

The national legislation provides for the possibility of plea bargaining in addition to different protection measures for collaborators to justice.

Protection of witnesses and reporting persons (arts. 32 and 33)

The former Yugoslav Republic of Macedonia has a comprehensive legal framework and a specialized unit within the Ministry of Interior for witness protection. A wide range of protection can be provided for persons who give a statement or act as a witness in a procedure for a corruption offence, including relocation and change of identity of witnesses and their family.

The person has the right to compensation for damage that he or a member of his family may suffer owing to the statement given or appearance as a witness. Such compensation is paid with funds from the national budget. The protection also applies to victims insofar as they are witnesses.

The CP contains a range of evidentiary rules to ensure the safety of witnesses in danger, including the possibility for an examination conducted with the assistance of technical devices for transfer of picture and sound (distorting the face and the voice).

The national authorities reported on different provisions on the protection of reporting persons (Law on the Prevention of Corruption; CC; Law on Labour Relations; Law on Protection from Harassment in the Workplace). However, the reviewing experts noted the fact that these provisions were fragmented, as well as the absence of ad hoc whistle-blower protection legislation. The former Yugoslav Republic of Macedonia indicated that amendments to the Law on the Prevention of Corruption are currently being prepared in order to introduce a whistle-blower protection system and provide systematic and institutional protection of whistle-blowers.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

The CC regulates confiscation. Article 98 provides for the confiscation of the direct and indirect proceeds of a crime, from the offender or from third parties, including value-based confiscation.

Article 98-a provides for "enlarged confiscation" which could be applied when the property exceeds the legal incomes of the offender and originates from a crime committed within a criminal association or which is related to money-laundering punished by imprisonment of at least four years.

Confiscation also covers property, equipment or other instrumentalities used in or destined for use in offences.

The CP allows for a range of investigative measures available for the identification, tracing, freezing or seizure of criminal proceeds and instrumentalities.

The former Yugoslav Republic of Macedonia has a special and comprehensive Law on the Management of Confiscated Property, Proceeds and Objects Seized in Criminal and Misdemeanour Proceedings. This Law establishes an agency with a wide scope of work.

Pursuant to a request by the public prosecutor, the court may order the production and seizure of banking and commercial records. The preliminary procedure judge should decide about the request by the public prosecutor immediately, and no later than 12 hours from receipt of the request. In emergency cases, the public prosecutor may impose the mentioned measures without a court order (art. 200 of the CP).

Statute of limitations; criminal record (arts. 29 and 41)

The period of limitation for criminal cases ranges from 2 to 30 years, depending on the severity of the sentence prescribed for a specific crime, and starts on the day the crime was committed or the consequence occurred.

According to article 39 of the CC, previous convictions can be taken into consideration when deciding on the severity of a sentence. The governmental authorities confirmed that this provision was not limited to cases of prior domestic convictions but extend also to foreign convictions.

Jurisdiction (art. 42)

Jurisdiction over corruption offences is established in the CC, Chapter 12 (art. 116: territorial jurisdiction; art. 118: active personality jurisdiction; art. 119: passive personality jurisdiction). The former Yugoslav Republic of Macedonia also adopted additional grounds of criminal jurisdiction, other than those described in article 42 of the Convention (art. 117: universal jurisdiction).

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

According to articles 5-a and 46 of the Law on the Prevention of Corruption, legal acts resulting from corruption are null and void and any person damaged by a corruption act has a right to request damage compensation (actual damage and lost profit) from the offender.

The CP also contains provisions dealing with the rights of victims (art. 53) and the rights of the injured party (art. 57). The victim of a crime has the right to participate in the criminal proceedings for the purpose of filing a legal property claim for damages.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The former Yugoslav Republic of Macedonia has several authorities specialized in combating corruption through law enforcement. The State Commission for the Prevention of Corruption, established in 2002, can instigate an initiative for criminal prosecution of elected or appointed officials, and track and follow the assets and changes of assets of public officials.

The Public Prosecutor's Office for Organized Crime and Corruption is competent to prosecute a series of crimes. Those crimes are brought before the Specialized Department for Cases of Organized Crime and Corruption of the First Instance Court Skopje 1.

The anti-corruption institutional framework also comprises the Anti-corruption Unit of the Ministry of Interior, the Financial Police Administration of the Ministry of Finance, the Anti-corruption Department of the Public Revenue Office, and the Integrity Department of the Customs Administration.

The independence of those specialized bodies is ensured by law. Their staff is provided with adequate training and resources.

A number of legal provisions mandate cooperation between public authorities and authorities responsible for investigating and prosecuting criminal offences. Public officials are legally required to report every punishable act related to corruption.

Other legal provisions mandate cooperation between the private sector, particularly financial institutions, and the State prosecution services.

Article 58 of the Law on the Prevention of Corruption requires the proactive reporting, by all employees in financial institutions, of suspicious transactions related to corruption. Article 112 on the Law on Banks provides that requests for documentation from State prosecutors cannot be denied by financial institutions on grounds of confidentiality. Article 30 of the Law on Prevention of Money Laundering and Financing of Terrorism establishes an obligation for financial institutions and other designated entities to report suspicious transactions to the financial intelligence unit (FIU). Hotlines for reporting corruption have also been opened for the public.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter III of the Convention are highlighted:

- The fact that different initiatives have been taken by the national authorities to encourage the cooperation with the private sector as well as with the public;
- The fact that it is sufficient to establish the criminal nature of the proceeds, without the need to identify the predicate offence, for a money-laundering conviction was positively noted by the review team as conducive to the pursuit of money-laundering cases;
- The fact that a person who has given a statement or witnessed in a procedure for corruption has the right to compensation for damage paid with funds from the national budget (art. 19 of the Law on the Prevention of Corruption);
- The possibility of enlarged confiscation;
- The fact that the enforcement of the special measures involving confiscation of property and seizure of objects has no statute of limitation;
- The existence of a special law and a special agency dealing with the administration of frozen, seized or confiscated property.

2.3. Challenges in implementation

While noting the advanced anti-corruption legal system of the former Yugoslav Republic of Macedonia, the reviewers identified some challenges in implementation and/or grounds for further improvement and made the following remarks, to be taken into account for action or consideration by the competent national authorities

(depending on the mandatory or optional nature of the relevant requirements of the Convention):

- With regard to bribery in the private sector, the former Yugoslav Republic of Macedonia should consider a wider use of articles 253 (passive bribery) and 253-a (active bribery) of the CC (art. 21 of the Convention);
- The former Yugoslav Republic of Macedonia should furnish copies of its laws criminalizing the laundering of proceeds of crime to the Secretary-General of the United Nations (art. 23, para. 2(d) of the Convention);
- With regard to illicit enrichment, the former Yugoslav Republic of Macedonia is encouraged to increase the effective implementation of article 359-a of the CC (art. 21 of the Convention);
- The former Yugoslav Republic of Macedonia may wish to extend the scope of application of the domestic provision on the criminalization of attempt to cover all corruption offences (art. 27, para. 2 of the Convention);
- The former Yugoslav Republic of Macedonia is encouraged to continue efforts to enact specific legislation on the protection of reporting persons (art. 33 of the Convention).

3. Chapter IV: International cooperation

The former Yugoslav Republic of Macedonia has a comprehensive special law on international cooperation in criminal matters. However, it was difficult to assess in detail the practice of providing international legal assistance in corruption cases, due to the absence of relevant data.

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

The former Yugoslav Republic of Macedonia has a two-tier extradition system in place: a regular procedure whereby the final decision is taken by the Minister of Justice, and a simplified procedure when the person agrees to be extradited, whereby the final decision is taken by the Judicial Council. Both are regulated in the Law on International Cooperation in Criminal Matters (LICCM).

Requests for extradition received from a foreign State should be forwarded through diplomatic channels or sent directly to the Ministry of Justice which, will then submit it to the competent judicial authority.

The competent judge may detain the person whose extradition is sought for a maximum period of 180 days. He may also impose another measure for securing the presence of that person. His decision may be subject to an appeal addressed to the criminal council of the Court in a period of 24 hours after the delivery of the decision.

Extradition in the absence of dual criminality is at present not possible.

Although extradition is not conditional on the existence of a treaty and could be based on the principle of reciprocity, the former Yugoslav Republic of Macedonia

considers the Convention as a legal basis for extradition, provided the conditions of the LICCM are met.

Offences are extraditable if the conditions related to dual criminality and the minimum period of imprisonment are satisfied. Accordingly, most corruption offences which are punishable by at least one year are thus extraditable offences. Corruption offences which do not satisfy the one year imprisonment condition could be extraditable on the basis of the direct applicability of the Convention pursuant to Article 118 of the Constitution.

Criminal offences related to a breach of the regulations on taxes, fees, duties and foreign exchange operations are extraditable.

The former Yugoslav Republic of Macedonia does not extradite its citizens unless provided otherwise by international or bilateral agreements. The possibility of submitting a case without undue delay to its competent authorities for the purpose of prosecution is introduced in the country's legislation, but the principle *aut dedere aut judicare* is not regulated by statutory law and has never been applied.

A foreign sentence can be enforced provided that the condition of dual criminality is met and that the foreign criminal judgement is final, enforceable and has been rendered *in presentia*.

The former Yugoslav Republic of Macedonia is a party to the European Convention on Extradition and three of its Additional Protocols, and has concluded a number of bilateral treaties on extradition, including with countries from the region (Serbia, Croatia, Montenegro and Bosnia and Herzegovina).

None of the corruption offences is deemed a political offence. Moreover, the former Yugoslav Republic of Macedonia does not authorize extradition based on political grounds and its legislation guarantees fair treatment to any person concerning whom an extradition request is made while proceedings are under way.

Part two of the LICCM provides for the transfer of sentenced persons. The former Yugoslav Republic of Macedonia is also a party to the Council of Europe Convention on the Transfer of Sentenced Persons and its Additional Protocol and has signed relevant bilateral agreements (with Albania, Bosnia and Herzegovina, Montenegro, Serbia, Slovenia and Turkey).

The LICCM (chapter III) provides for the possibility of taking over of criminal proceedings in case of dual criminality (art. 43, para. 1). The Law also provides for the possibility of transferring to a foreign State criminal proceedings for criminal offences for which a prison sentence up to ten years is foreseen (art. 47, para. 3 of the Law).

Mutual legal assistance (art. 46)

The LICCM provides for a wide range of mutual legal assistance (MLA) measures. The central authority responsible and authorized to receive MLA requests and either to execute them or to transmit them to the competent authorities for execution is the Ministry of Justice, Department for International Legal Assistance.

An MLA request should be, as reported by the national authorities, in Macedonian and should be sent in writing. It can be received electronically or through another

way of telecommunication for which a record shall be kept, and the original shall be sent through regular mail.

The former Yugoslav Republic of Macedonia may provide assistance irrespective of the existence of a treaty. Furthermore, dual criminality is not a precondition to render assistance. MLA requests regarding physical and legal persons are treated equally.

The LICCM provides for the interrogation through videoconference and through telephone conference, and the former Yugoslav Republic of Macedonia has had previous relevant experience. The LICCM also clearly provides for the delivery of spontaneous information.

The former Yugoslav Republic of Macedonia will comply with a request for confidentiality; if that is not possible, it will notify the foreign requesting authorities immediately.

Bank secrecy and fiscal matters are not grounds for declining an MLA request. Such a request may be denied if it is based on considerations of racial, ethnical and social affiliation or religious beliefs. The decision for rejection should be elaborated upon unless otherwise specified by an international agreement.

Article 17 of the LICCM stipulates the urgency of acting upon receiving the letter rogatory by the foreign competent authority.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

The former Yugoslav Republic of Macedonia has put in place a regulatory framework and has concluded many bilateral agreements that provide for the international exchange of information for purposes of law enforcement.

The national law enforcement authorities have channels of communication through, inter alia, the International Criminal Police Organization (INTERPOL) and the European Police Office (Europol). Furthermore, the national FIU is a member of the Egmont Group of Financial Intelligence Units.

The former Yugoslav Republic of Macedonia has been an observer of the Camden Assets Recovery Inter-Agency Network (CARIN) since July 2014. The former Yugoslav Republic of Macedonia has also been a member State of European Partners against Corruption (EPAC) since 2009.

The conduct of joint investigation teams is regulated in article 38 of the LICCM. The domestic competent authorities for detection and prosecution of organized crime and corruption can be part of the joint investigation teams with the foreign competent authorities. However, the former Yugoslav Republic of Macedonia did not take measures to promote the exchange of personnel and other experts, including the posting of liaison officers.

The LICCM and the CP, together with a large number of bilateral agreements on international cooperation in criminal matters to which the former Yugoslav Republic of Macedonia is a party, authorize and organize the use of special investigative techniques in matters of organized crime and corruption.

Chapter XIX of the CP provides for special investigative measures which could be used in corruption cases including the monitoring and recording of telephone and other electronic communications, the monitoring and recording of conversations with technical devices, secret access to and search of computer systems, simulated offering and receiving bribes, controlled delivery and the use of undercover agents.

The former Yugoslav Republic of Macedonia established a department for undercover operations in 2005 within the Division for Organized or Serious Crime. This department includes a unit for undercover police officers, a unit for interception of communications, a unit for surveillance, monitoring and documentation and a unit for protection of witnesses.

There appear to be no challenges regarding the admissibility in court of evidence derived from special investigative techniques.

3.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter IV of the Convention are highlighted:

- The fact that the former Yugoslav Republic of Macedonia has a comprehensive special law on international cooperation in criminal matters with provisions on all modalities of international cooperation in criminal matters;
- The fact that mutual legal assistance is not subject to the dual criminality requirement.

3.3. Challenges in implementation

While noting the advanced anti-corruption legal system of the former Yugoslav Republic of Macedonia, the reviewers identified some challenges in implementation and/or grounds for further improvement and made the following remarks, to be taken into account for action or consideration by the competent national authorities (depending on the mandatory or optional nature of the relevant requirements of the Convention):

- The reviewing experts highlighted the need for the former Yugoslav Republic of Macedonia to put in place and render fully operational an information system compiling in a systematic manner statistical data and information on extradition and mutual legal assistance cases with a view to facilitating the monitoring and tracking of such cases and assessing the effectiveness of implementation with regard to, among others, the duration of MLA and extradition proceedings, and encouraged the national authorities to continue their efforts in this regard;
- The former Yugoslav Republic of Macedonia should take effective measures to promote the exchange of personnel and other experts, including the posting of liaison officers;
- In the interests of greater legal certainty in the absence of applicable extradition treaties, the former Yugoslav Republic of Macedonia should take measures to more specifically address the *aut dedere aut judicare* principle in its domestic legislation;

- The former Yugoslav Republic of Macedonia may wish to consider removing the limitation contained in article 47, paragraph 3, of the LICCM, whereby the reassignment of criminal procedure may only be granted for offences for which a prison sentence of up to ten years is foreseen.

3.4. Technical assistance needs identified to improve implementation of the Convention

The former Yugoslav Republic of Macedonia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the articles of Chapter IV of the Convention:

- Capacity-building in the area of extradition and mutual legal assistance;
- Training for judges and public prosecutors on the implementation of Chapter IV of the Convention;
- Software for collecting, keeping and processing statistical data for cases of international legal assistance;
- Summary of good practices/lessons learned;
- On-site assistance by a relevant expert;
- Legal advice.